



DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Bob Corbin
~~XXXXXXXXXXXX~~
ATTORNEY GENERAL

March 1, 1979

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ARIZONA ATTORNEY GENERAL

John Price, Esq.
Price, Tinney, Lindberg & Gianas
Attorneys at Law
Suite 800
4400 East Broadway
Tucson, Arizona 85711

Re: I79-065 (R78-244)

Dear Mr. Price:

We concur with your opinion dated August 7, 1978, in which you informed the Superintendent of Sunnyside Unified School District #12 that the District may not terminate employment of employees solely because they attained age 65, when their contracts expired after the effective date of Ch. 209, § 8, Laws of 1978, extending the mandatory retirement age to age 70.

Sincerely,

A handwritten signature in cursive script that reads "Bob Corbin".

BOB CORBIN
Attorney General

BC:lp

JOHN PRICE
WILLIAM H. TINNEY
JOHN E. LINDBERG
PETER T. GIANAS

LAW OFFICES OF
PRICE, TINNEY, LINDBERG & GIANAS
FIRST NATIONAL BANK FINANCIAL CENTER
4400 EAST BROADWAY, SUITE 800
TUCSON, ARIZONA 85711
August 7, 1978

TELEPHONE
AREA CODE 602
795-6630

Mr. Lewis T. Sorensen, Superintendent
Sunnyside Unified School District No. 12
2238 East Ginter Road
Tucson, Arizona 85706

Dear Mr. Sorensen:

This is in response to your verbal request made over the telephone on July 11, 1978, concerning effect of House Bill 2412, which became law in Arizona on June 14, 1978.

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As I understand the facts implicit in your inquiry, your district terminated employment of three employees for the sole reason that they attained age 65 during their current contract year commencing July 1, 1977, but prior to June 14, 1978; that these employees continued to work and receive wages and fringe benefits to the end of the contract year, June 30, 1978; that only one of the three employees had requested, pursuant to Arizona statute, permission to continue work beyond age 65.

The question then that is raised is the effect of provisions of House Bill 2412 that extended the mandatory date of retirement for Arizona public employees from age 65 to age 70 when applied to the above factual situation.

I quote from the following provision of Opinion of the Attorney General of the State of Arizona, Opinion No. 78-129 (R78-184), dated June 27, 1978, to wit:

"...We conclude that all faculties whose contracts of employment extend to or beyond June 14, 1978, and who were not seventy years of age or older before that date, are entitled to continue in their present positions until they reach the age of seventy unless they may be terminated for reasons other than age."

I enclose a copy of said Opinion as Addendum 1 to this letter, which said Opinion sets forth the reasons for the conclusion of the Attorney General above quoted.

Mr. Lewis T. Sorensen

August 7, 1978
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Attorneys for the Arizona Board of Regents requested a follow-up concerning the Attorney General Opinion 78-129 (R78-184) on June 28, 1978, and the Attorney General issued his second Opinion on this question on July 20, 1978, Opinion No. 78-148 (R78-204), a copy of which is enclosed as Addendum 2 to this letter. This Opinion addressed the problem of Arizona public employees who were employed during 1978 but whose contracts expired prior to June 14, 1978, and the Attorney General reached the same opinion that these employees would also have to be retained until age 70 if they were being released solely because they had attained age 65. The Attorney General, in this Opinion, also states that because of House Bill 2412 statutory need for your employees to have requested a continuation of their employment past age 65 was obviated.

I believe the district is legally obligated under the facts above cited to retain the three employees in question.

This letter opinion is being forwarded to the Arizona Attorney General for his concurrence, dissent, or modification, with information copy to the Pima County Attorney.

Sincerely yours,

PRICE, TINNEY, LINDBERG & GIANAS

By /s/ JOHN PRICE
John Price

JP/dl
Enclosures

cc: John A. LaSota, Jr.
Attorney General
State of Arizona
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Phoenix, Arizona 85007

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